

ORIGINAL TRANSCRIPT

BEFORE THE DIVISION OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES

STATE OF UTAH

IN THE MATTER OF THE
DEER CREEK MINE, PERMIT Cause No. C/015/0018
RENEWAL APPLICATION,
CARBON COUNTY, UTAH.

INFORMAL CONFERENCE

TAKEN AT: Department of Natural Resources
1594 West North Temple
Salt Lake City, Utah

DATE: January 24, 2006

REPORTED BY: Scott M. Knight, RPR



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APPEARANCES

PRESIDING OFFICER:

John Baza, Director of the Division of Oil, Gas &
Mining

FOR THE PRESIDING:

Keli Beard, Assistant Attorney General

OFFICER:

FOR THE DIVISION OF OIL, GAS & MINING:

Steven F. Alder, Assistant Attorney General

FOR UTAH ENVIRONMENTAL CONGRESS:

Joel Ban

Kevin Mueller

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FOR PACIFICORP:

John S. Kirkham, Esq.,

STOEL, RIVES

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1 meeting moving, I'm going lay out a few ground
2 rules that I desire and then follow up with what
3 will proceed subsequent to this informal
4 conference.

5 So I'm going to indicate that the
6 following procedure should apply to this informal
7 conference. First of all, I would ask that those
8 parties who are here, in order to keep things
9 moving, I'd like to limit their presentations to
10 no more than 30 minutes for any testimony,
11 evidence, or comment that they want to provide.

12 I'm also going to indicate that
13 there's--this is not an opportunity for back and
14 forth discussion or cross-examination. Please
15 direct all your comments and questions to me as
16 the presiding officer and refrain from discussion
17 with other parties involved, including the
18 Division.

19 All parties have access to the
20 information in the Division's files to the extent
21 required by law. And those are public records
22 and are available for review in our public
23 information center. So if you have not yet had
24 the opportunity to review what is in our public
25 information center, you certainly will prior to



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1 operator's responsibility on the approved plan.
2 Five, that the operator has not provided evidence
3 that the bond will continue to be in effect. Or
4 six, that any additional information required by
5 the Division has not been provided.

6 And these, as I said, are in accordance
7 with Utah Code Section 40-10-9 and also Utah
8 Administrative Code Rule R645-303-233.

9 Interested parties have the right to
10 challenge any decision made by the Division to the
11 Board of Oil, Gas & Mining. And should a party
12 choose to challenge the Division's decision, the
13 burden of proof will rest with the opponents of
14 renewal.

15 So that being said, I'd like the
16 parties who wish to present information or comment
17 today to please identify themselves. I know that
18 the letter of objection received was received from
19 Mr. Joel Ban for the Utah Environmental Congress.
20 And if you could state your name again for the
21 record.

22 MR. BAN: My name's Joel Ban. And I
23 work and represent the UEC. To my right's Kevin
24 Mueller. He's the director of UEC. Do you want
25 me to--



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1 October of '05, the UEC had filed an appeal,
2 administrative appeal to the Forest Service based
3 on a number of violations of NEPA as well as the
4 Manti La Salle Forest Plan. These violations are
5 related to the fact that the EA in this case made
6 a finding of no significant impact. However,
7 we're not sure that all the effects of the
8 proposed mining portal were analyzed.

9 The EA had made a finding of no
10 significant impact. However, there were a number
11 of effects that weren't analyzed, including the
12 effects of the golden eagle. The Manti La Salle
13 Forest Plan does, in fact, prohibit the nest
14 abandonment of golden eagles, which the EA had
15 disclosed--was a likely impact from the proposed
16 activities.

17 There are a number of issues that we
18 enclosed in our objection that hopefully the
19 Division and PacifiCorp have reviewed. And I'm
20 not going to go into the details of the appeal.

21 The objection was filed mainly because
22 the UEC had entered into informal appeal
23 resolution with the Forest Service. I wasn't
24 intimately involved in those discussions.
25 However, Mr. Mueller had detailed discussions, I



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1 objection--however, we do feel that some of the
2 underlying problems with the situation is that the
3 Forest Service in this informal appeal resolution
4 period had agreed to take certain measures to
5 protect the surface environment, which the Forest
6 Service is entitled to do.

7 And it seems that the--some of the
8 other parties involved had aired their opinion
9 that the Forest Service didn't have the authority
10 to interject these certain provisions into this
11 contract.

12 So at this time, we hope that certain
13 monitoring will occur. The monitoring of micro-
14 invertebrates. We do know that this project will
15 inflect short-term major effects on the ecosystem,
16 specifically the watershed within Deer Creek, as
17 well as impacts to the golden eagle, which I
18 alluded to before, the--certain mitigation
19 measures were proposed that weren't discussed in
20 the EA. We feel that's a major flaw within the
21 analysis. And there are certain other provisions
22 of SMCRA and the mineral leasing act, which we
23 don't feel were complied with in terms of the
24 overall NEPA process for this particular project.

25 And I don't know if Kevin might want to



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1 between DOGM, Forest Service, the mine. I don't
2 know who else. But it became clear that the
3 Forest Service feels unempowered to manage a lot
4 of surface facilities. And that's something that
5 is a new concept to me. You know, in reviewing
6 some of the new--the regulations that we don't
7 usually deal with, such as SMCRA and--it doesn't
8 look like the Forest Service has, you know, in
9 the legal realm, lost its authority to manage the
10 surface to the degree that it appears that in
11 reality it has. And that's a concern that
12 emerged after the appeal resolution process with
13 the Forest Service.

14 That's something that really concerns
15 me, because it's not just an issue with this
16 facility and this mine and the mine plan
17 modification, but for the ability of agencies to
18 work together into the future and the ability of
19 the Forest Service to maintain its legally granted
20 surface control authority, especially to commit to
21 terms in the forest plan that the Forest Service
22 apparently feels unempowered to be able to commit
23 the mine to sticking with. That's a real
24 concern, because it makes the forest plan
25 meaningless. You know, if you have monitoring,



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1 which is, you know, arisen in the past and could
2 also be a problem in the future. And we hope
3 that certain--there's a certain understanding
4 among this agency as to what their role is in
5 terms of projects that occur on Forest Service
6 land. So that's kind of another goal, I guess,
7 of UEC at this time.

8 MR. MUELLER: And I think it's evident
9 in the--you know, the objection that the attached
10 appeal, that we believe it's clear that there
11 should have been an EIS process. And the
12 mitigation measures that were committed to should
13 have been analyzed under that and addressed and
14 committed to under that EIS process, because there
15 are significant impacts from this project
16 cumulatively. And the mitigation measures that
17 were committed to, some weren't even addressed in
18 the EI--in the EA process. And some of the
19 mitigation measures we believe will actually
20 increase the total impacts on wild life and on
21 the watershed as opposed to reducing the impacts.
22 And--but that's a concern that obviously couldn't
23 be addressed in the resolution process or the
24 objection process here. But we're hoping to be
25 able to make this process avail itself of its



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1 there a connection between this permit renewal and
2 the Rilda Canyon expansion, in your viewpoint?

3 MR. BAN: Kevin may feel differently,
4 but I thought I was commenting just on the portal
5 construction and the permit renewal. I don't
6 think I was commenting on the Rilda Canyon.

7 MR. BAZA: Okay. So your comments are
8 really directed towards the permit renewal of the
9 Deer Creek Mine.

10 MR. BAN: I believe so.

11 MR. BAZA: Okay. So when you referred
12 to the project, that's the project at hand is the
13 permit renewal.

14 MR. BAN: Yes.

15 MR. BAZA: Okay. Well, I guess Mr.
16 Kirkham, we'll turn some time over to you to make
17 some comments.

18 MR. KIRKHAM: Thank you, Mr. Baza. As
19 indicated, I think maybe we need to just review
20 for the record--and I'll try not to repeat what
21 you've already reviewed--but for the record, the
22 current status of the PacifiCorp permit is that
23 there are no pending permit revisions. The mine
24 permit has been fully approved. And there are no
25 pending appeals or unresolved issues related to



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1 publish a notice in connection with that renewal
2 process. And that occurred on November 15. As I
3 think you've indicated, the application review
4 deadline was December 29. And a written objection
5 was filed on December 29, which is the reason for
6 this informal conference.

7 Again, as you have stated, the
8 permittee has a right of renewal. And the
9 Division, under both the statute, which you've
10 cited as 40-10-9(4)(a), provides that the Division
11 shall renew the permit unless it enters very
12 specific findings, which you previously outlined,
13 and I won't review again.

14 I think the critical thing here is that
15 under both the statute and specifically under the
16 provisions of R645-303-233.200, the burden of
17 proof--and let me just quote that--it says, "In
18 the determination of whether to approve or deny a
19 renewal of a permit, the burden of proof will be
20 on the opponents of renewal."

21 And as we've listened to the position
22 of UEC--and I think I took notes that would try
23 to address these issues--there was nothing in
24 their presentation that related to any of the
25 criteria the Division looks at with respect to



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1 the Forest Service.

2 Concerns were expressed over the Forest
3 Service authority as the surface management agency
4 and the processing of what I assume were
5 revisions. In connection with a permit renewal,
6 since it is an absolute right of renewal, unless
7 the Division enters certain specific findings,
8 there is no Forest Service jurisdiction in
9 connection with this renewal process that is under
10 way right now.

11 I should also point out that SMCRA does
12 establish the roles of the various respective
13 agencies in connection with both the permitting
14 process and the renewal process. And that's not
15 an issue that is within the jurisdiction of the
16 Division to try and be dealing with.

17 Based upon everything we've heard--and
18 specifically, since we did not hear anything that
19 relates to any of the criteria that the Division
20 has to review in connection with the renewal, it
21 appears to us that what was raised related solely
22 to what was the prior appeal that the objecting
23 party, UEC, brought, and had subsequently lost.

24 And so we don't feel there's any reason
25 to try and relitigate those issues in this renewal



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1 opening comments, there's one of those renewal
2 criteria I'd like your opinion on, which is Item
3 No. 6, which is any additional information
4 required by the Division that has not been
5 provided. Would you comment on that and what--in
6 your opinion, what types of items would be
7 addressed in that particular criteria?

8 MR. KIRKHAM: Sure. That--just for the
9 record, that requirement is found two places. In
10 the statute, it's at 40-9--I'm sorry--40-10-9
11 (4)(a), I believe it's small 5, or Roman numeral
12 V, states, "Any additional, revised, or updated
13 information required by the Division has not been
14 provided." And then the appropriate rule is,
15 again, R645-303-233.160. And that states,
16 "Additional revised or updated information
17 required by the Division under R645-303-232.250
18 has not been provided by the applicant." And a
19 reference to 250 just is simple--a simple
20 statement, "Additional revised or updated
21 information required by the Division."

22 Long introduction, short answer. The
23 Division determined the application to be
24 administratively complete on October 24.
25 Therefore, there was nothing that the Division had



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1 opportunity now for UEC to respond, to add any
2 additional information you want to include on the
3 record.

4 MR. BAN: Can I ask questions of the
5 Division?

6 MR. BAZA: I can say this. You can ask
7 the questions, but you may not be able to get the
8 answers today.

9 MR. BAN: Okay.

10 MR. BAZA: But go ahead and ask your
11 questions.

12 MR. BAN: Anyone can respond to this, I
13 guess. It's kind of directed towards the Division.
14 I mean, I was wondering if the Division had a
15 role in preparing the NEPA document for the EA
16 for the permit renewal and whether or not they
17 had a role in making the decision to make a
18 finding of no significant impact and what the
19 Division views its role in preparing the NEPA
20 document.

21 Those are the questions that I have,
22 because it seems from the regulations that they
23 clearly do have a role within the NEPA process
24 that the Forest Service apparently had issued the
25 finding of no significant impact. However, it



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1 We feel that any project that occurs on
2 Forest Service land must comply with the plan.
3 And, you know, the project has its--was analyzed
4 in the EA--will not comply with the plan and
5 won't comply with the micro-invertebrates
6 monitoring, the effects to golden eagles, the
7 sensitive species. And that's pretty much why
8 we're here.

9 And so--to meet some of these concerns,
10 we'd formed this contract, which we understand
11 UDOGM had a role in--maybe not a direct role that
12 was a contract between UEC and the Forest
13 Service--but we had pretty strong indication that
14 UDOGM was playing a hand in that--for that
15 particular contract. And it's still our hope that
16 we can try to counteract some of these concerns
17 that UDOGM may have had with that contract. In
18 light of this being an informal conference, we had
19 hoped to get some dialogue from the Division on
20 how we can resolve some of these conflicts.
21 So . . .

22 MR. MUELLER: Can--

23 MR. ALDER: Mr. Baza?

24 MR. MUELLER: Perhaps I could--I just
25 wanted to make a couple of comments. First, John



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1 the Forest Service has, in reality, lost its
2 control over even the ability to consent, because
3 the mine went ahead and--I guess it was the
4 last--the permit was issued in July, which was
5 months before the Forest Service consented. So
6 that's one of the larger problems dealing with
7 surface authority and the decision-making
8 process--and there--the less than perfect
9 relationship between agencies, where the Forest
10 Service has effectively lost its control of the
11 surface.

12 Now, in filing this objection, UEC had
13 hoped that this process would avail itself of
14 trying to resolve some of the concerns coming out
15 of that mine plan modification, even though this
16 is the renewal of the permit, in the form of
17 getting the terms of--at least the majority of the
18 resolution agreement that we signed with the
19 Forest Service incorporated into the permitting or
20 whatever the appropriate vehicle is.

21 Doesn't look like that's possible. But
22 I was hoping that this would be--you know, that--
23 you know, a procedure, an administrative procedure
24 we could go through to air our concerns before,
25 you know, having to look at the next step, which



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1 has a basis in legal argument or anything like
2 that. But I think that, as I stated in our
3 opening--in my opening statements, this is an
4 opportunity to provide information. And my
5 opinion is that if the information you're
6 providing or any party in this room providing is
7 constructive to the Division's process of renewing
8 the permit, then we'll use that. And we'll
9 utilize it. And we'll incorporate it into our
10 decision making.

11 But I also have the opinion that this
12 is the Division's decision to make. And if
13 there's a role for the Forest Service or any
14 other party in that decision, that there are
15 procedures in place to make sure it happens.
16 This informal conference is one of those
17 procedures. And so, if the Forest Service were
18 here and wanted to make comment at this time,
19 they are certainly welcome to do that too.

20 So I really am looking at this informal
21 conference as--just as a method of hearing from
22 interested parties on the permit renewal. And if
23 the Division can incorporate that into their
24 decision making at this point, then I certainly
25 expect that they will.



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1 necessarily clear in UEC's mind. If it is, it's
2 certainly not been made clear to me.

3 MR. MUELLER: Perhaps I can try to
4 clarify that.

5 MR. BAZA: Go ahead.

6 MR. MUELLER: Again, this hasn't been
7 in litigation. It hasn't been in front of a
8 judge. It hasn't been in the courts. We're
9 renewing a permit that was modified. And there's
10 still an--ongoing concerns with the ways that it
11 was just modified in a matter of months ago. So
12 there are concerns with this--the permit basically
13 has some new conditions on it. And we have
14 concerns with the new permit that have never--were
15 not in existence the last time it was up for
16 renewal.

17 And you're right. The legal
18 differences between renewal and modification and
19 the ability of this administrative process or
20 objection process to try to air concerns and how
21 they overlap--you know, this is not a law that
22 UEC deals with a lot. So there may be confusion.
23 I'm not acknowledging that. I'm just saying maybe
24 there is.

25 But we were hoping that we could use



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1 MR. BAN: Yes.

2 MR. BAZA: And this was the NEPA

3 document from this last year--

4 MR. BAN: Yeah.

5 MR. BAZA: --that related to the mine

6 plan modification.

7 MR. BAN: I think it was the permit

8 renewal, wasn't it?

9 MR. MUELLER: That was the mine plan

10 modification.

11 MR. ALDER: Yeah. That's the

12 confusion.

13 MR. BAN: Okay.

14 MR. BAZA: Then your second question

15 was, what role did they play and what decisions

16 were reached? And third question, I missed if

17 there was one.

18 MR. BAN: Did they have a role in

19 issuing the finding of significant impact?

20 MR. ALDER: Issuing what?

21 MR. MUELLER: Well-- the only FONSI was

22 the Forest Service FONSI, unless the Division

23 issued one in July that we're not aware of.

24 MR. BAN: Just let him answer.

25 MR. BAZA: Okay.



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1 Forest Service, at its appropriate place in the
2 administrative process that led up to the approval
3 of the mine plan modification, had a role to
4 concur. And this is not the correct forum to
5 debate the respective roles of those various
6 agencies.

7 This forum is to determine, under the
8 rules of the Division, whether or not the Division
9 is under the obligation to approve the renewal.
10 And the only way they can--that the Division can
11 deny the renewal is to specifically find in
12 writing that one of the elements under R645-303-
13 233 does not exist. And it is UEC's burden, as
14 the objecting party--it is their burden to prove
15 that one of those elements doesn't exist. It
16 isn't--we don't like it, it isn't "Gee, we wanted
17 to raise this issue previously." They have a
18 burden to establish that one of those elements has
19 not been satisfied. Otherwise, the Division,
20 under the language of the rule, will approve the
21 application for renewal.

22 And so I sympathize that they would
23 like to have their objections heard. And I think
24 they did. And I think PacifiCorp has gone out of
25 the way to try and respond to the concerns when



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1 put on the record at this point?

2 If not--

3 MR. MUELLER: (Raises hand.)

4 MR. BAZA: Mr. Mueller.

5 MR. MUELLER: Yeah. In light of what
6 John Kirkham said, I don't know if this is
7 obvious, but the administrative procedures we went
8 through with the Forest Service, according to his
9 time line, occurred at least four months, five
10 months after the mine plan modification he says
11 was made on July 27. That's something important
12 to note.

13 It's also important to note that the
14 Forest Service correctly has held that it has the
15 authority to consent. And I believe John Kirkham
16 is probably trying to split legal hairs where--
17 with saying the Forest Service has authority to
18 concur, which is something other than the consent
19 that the Forest Service gave in December.

20 MR. BAN: And I also believe that they
21 have the ability to attach coal lease stipulations
22 that are outlined in their plan. I'm not sure
23 when the exact time--the exact--when they're
24 required to attach the timing on that. I'm not
25 exactly sure on--but . . .



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1 anything I hear as to how that affects the
2 renewal criteria that have been elaborated by so
3 many people.

4 So, I mean, I think this is an informal
5 process. It's not supposed to be like we're
6 making arguments. We want to hear what that is.
7 But I haven't heard anything. So I don't know
8 that our response will take much time.

9 MR. BAZA: And do you have a
10 recommendation on how this informal conference
11 should proceed, giving the Division a chance to
12 make that response?

13 MR. ALDER: I think a few days to
14 submit that to you would be helpful before you
15 close the conference.

16 MR. BAZA: All right. Then I'd like to
17 sit with Counsel here for a minute. And we'll go
18 to another room, so--yes, sir.

19 MR. MUELLER: Is that when you'll find
20 out if there's an opportunity to submit additional
21 information?

22 MR. BAZA: We will address that.

23 MS. BEARD: Do you have a request on a
24 time that you would need to submit more
25 information?



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1 the permit renewal is based on the original
2 renewal date. And Mr. Kirkham can correct me on
3 this. But I think we concur in that. But I
4 don't know what your question would be. I think
5 we concur.

6 MR. BAZA: Is there a time certain that
7 the Division has to issue a decision on the
8 permit renewal?

9 MR. ALDER: Yes.

10 MR. BAZA: Pam's nodding her head.

11 MR. ALDER: I'm hearing yes all around
12 me.

13 MR. BAZA: And is that time certain the
14 February 7 date?

15 MR. ALDER: Personally, I haven't
16 researched that.

17 MR. BAZA: I'm seeing heads nodding yes
18 to that also.

19 Well, if that's the case, it seems to
20 be a firm deadline to me. And as we want--yes,
21 Pam.

22 MS. GRUBAUGH-LITTIG: Well, I was just
23 going to say, the permitting essentially expires.
24 And so it has to be renewed by that date. It--
25 and you issue a permit--a renewed permit. And



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1 In addition to that, I'll indicate
2 beyond that, there's an opportunity for,
3 obviously, UEC to discuss anything with the
4 Division that applies to its administrative
5 actions that could help in future processes of
6 this type, but that the appeal of any decision
7 that's reached by the Division--and I mentioned
8 this at the beginning--has to go, then, to the
9 Board of Oil, Gas & Mining. And there is a
10 requirement under Rule R645-300-200 that says in
11 order to conduct that administrative review of a
12 Division decision, that you would have to file
13 with the Board of Oil, Gas & Mining within 30
14 days of the Division's decision.

15 So with that, again, to reiterate, I'm
16 asking UEC to turn in any information they want
17 to provide to be considered in the permit renewal
18 by this Friday. The Division is under a--at
19 least a prescribed deadline in the rules to make
20 a decision on the permit renewal by a date
21 certain. And then UEC then has the opportunity,
22 of course, for a board hearing appeal to that.

23 Mr. Kirkham, do you have your hand--

24 MR. KIRKHAM: Well, my only question
25 was whether we'd be given the opportunity to



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1 I don't know what they're going to submit. And
2 so it's hard for me to say--if you give them
3 until Friday, PacifiCorp doesn't have that much
4 time before the Division has to make its decision.
5 So we're--we would appreciate getting a copy of
6 what's submitted.

7 MR. BAZA: Okay.

8 MR. MUELLER: Would it expedite the
9 process if we sent a copy to you, as well, just
10 so you get it right away?

11 MR. BAZA: I think it would--

12 MR. KIRKHAM: Yeah.

13 MR. BAZA: --if you do that to both
14 PacifiCorp and the Division. But as I've talked
15 with Counsel about this, I hope there hasn't been
16 a misconception about what this informal
17 conference represents. It is an opportunity to
18 provide information to help the Division reach a
19 decision on the permit renewal. It's not
20 necessarily an opportunity for appeal, because no
21 decision has been made yet.

22 And when I indicated at the beginning
23 of the informal conference that we wanted to limit
24 or restrict or avoid a lot of back and forth
25 discussion here, I don't think it's even an



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1 than that?

2 MR. BAZA: Well, honestly, I'm feeling
3 like the informal conference can close as of
4 today. But the UEC is still capable of providing
5 information to the Division--

6 MR. ALDER: Okay.

7 MR. BAZA: --up until Friday so that the
8 Division can reach a decision by the February 7
9 deadline.

10 MR. ALDER: Okay. Thank you.

11 MR. BAZA: Are there any other
12 questions on that?

13 Very well. Then, at this point, we'll
14 consider the conference closed. And UEC will have
15 that time frame to submit further statements to
16 the Division. Thank you very much.

17 MR. MUELLER: Thank you.

18 (Proceedings concluded at 11:38 a.m.)
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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.



Scott M. Knight

Scott M. Knight, RPR
Utah License No. 110171-7801

**BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

---00000---

IN THE MATTER OF	:	INFORMAL CONFERENCE
PACIFICORP DEER CREEK MINE	:	
PERMIT RENEWAL	:	FINDINGS OF FACT,
APPLICATION, DEER CREEK	:	CONCLUSIONS OF LAW AND
CANYON, EMERY COUNTY,	:	ORDER
UTAH	:	
	:	CAUSE NO. C/015/0018

---00000---

BACKGROUND

On January 24, 2006, the Division of Oil, Gas and Mining ("Division") held an informal conference in the above-captioned matter at the Division of Natural Resources, 1594 West North Temple, Salt Lake City, Utah. Director, John R. Baza conducted the informal hearing under the provisions of the Utah Administrative Procedures Act, Division Administrative Rules, and other applicable law.

Assistant Attorney General Steven F. Alder represented the Division at the hearing. John Kirkham, Esq. represented Applicant/Respondent Pacificorp. Joel Ban, Esq. represented Interested Party Utah Environmental Congress ("UEC"). The purpose of the informal conference was for any interested party to testify, present evidence, or comment on the issues involved in the renewal of Pacificorp's Deer Creek Mine Permit. Kevin Mueller, Executor Director of UEC and Joel Ban commented on behalf of UEC. Steve Alder commented on behalf of the Division. John Kirkham commented on behalf of Pacificorp. After hearing from all parties, receiving full disclosure of relevant facts, reviewing submitted exhibits, and considering

the evidence and relevant law, the Director Baza hereby makes the following findings of fact and conclusions of law, and issues the order below.

FINDINGS OF FACT

1. Pacificorp's Deer Creek Mine Permit will expire February 7, 2006.
2. Pacificorp filed for renewal on October 6, 2005, 120 days prior to expiration of its current mine permit.
3. The Division determined the application for renewal was administratively complete on October 24, 2005.
4. The Division published a public notice that the application was administratively complete on November 29, 2005.
5. UEC requested an informal conference on December 29, 2005, 30 days after the last published notice pursuant to Utah Administrative Code R645-300-123.
6. The Informal conference was held on January 24, 2006, at 10:00 a.m.
7. A record of the conference was made by Scott Knight, Thacker and Company, 50 W. Broadway, Suite 900, Salt Lake City, Utah 84101.
8. The record referenced above will be maintained in the conference file.

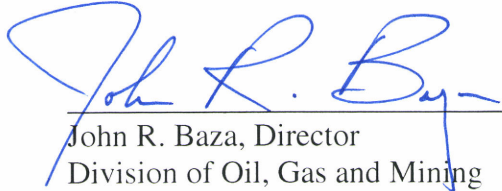
CONCLUSIONS OF LAW

1. UEC timely requested an informal conference under Utah Administrative Code R645-300-123. Pursuant to R645-300-123.130, UEC had 30 days after the "last publication of the newspaper advertisement" to request an informal conference. UEC requested an informal conference within 30 days.

ORDER

1. The informal conference closed on January 24, 2006.
2. All interested parties have until Friday, January 27, 2006 at 5:00 p.m. to submit any additional information pertaining to Pacificorp's renewal application to the Division.

DATED this 26th day of January 2006.



John R. Baza, Director
Division of Oil, Gas and Mining


CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF INFORMAL CONFERENCE for Cause No. C/015/0018 to be mailed by certified mail, postage prepaid, on the 27th day of January 2006 to the following:

Joel Ban
Wildlaw
1817 South Main Street, Suite 10
Salt Lake City, Utah 84115

Chuck Semborski
Energy West Mining Company
P.O. Box 310
Huntington, Utah 84528

Alice Carlton
U. S. Forest Service
Manti – LaSal National Forest
599 West Price River Drive
Price, Utah 84501



Vickie Southwick
Executive Secretary

Vs
cc: Wayne Hedberg
Pamela Grubaugh-Littig
John Baza
H:\INFORMAL CONFERENCE\DEER CREEK\DEER CREEK MAILINGPD2.DOC

BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

---ooOoo---

IN THE MATTER OF THE
DEER CREEK MINE, PERMIT
RENEWAL APPLICATION,
CARBON COUNTY, UTAH

NOTICE OF INFORMAL
CONFERENCE

CAUSE NO. C/015/0018

---ooOoo---

THE STATE OF UTAH TO ALL PERSONS INTERESTED IN THE ABOVE
ENTITLED MATTER.

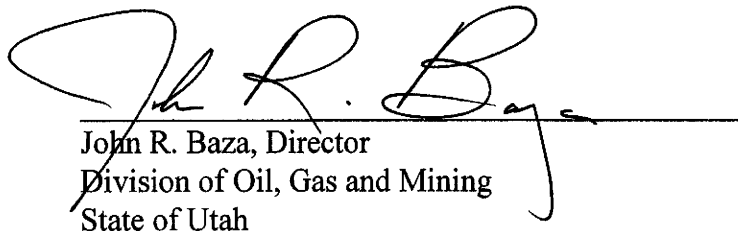
Notice is hereby given that the Division of Oil, Gas and Mining will conduct an informal conference on, January 24, 2006 beginning at 10:00 am, at the Department of Natural Resources, Room 1010, 1594 West North Temple, Salt Lake City, Utah. The informal conference will be conducted in accordance with the Utah Code 40-10-13 (2005) and Utah Admin. Code R645-300-100 (2005).

Persons interested in this matter may participate pursuant to Utah Admin. R645-300-123. The application, subsequent public comments, and request for informal conference may be inspected in the office of the undersigned, 1594 West North Temple, Suite 1210, Salt Lake City, Utah.

Pursuant to the Americans with Disabilities Act, persons requiring auxiliary communicative aids and services to enable them to participate in this conference should call Vickie Southwick at 538-5304, at least three working days prior to the hearing date.

DATED this 6th day of January 2006.

STATE OF UTAH
DIVISION OF OIL, GAS AND MINING


John R. Baza, Director
Division of Oil, Gas and Mining
State of Utah

WildLaw

A Non-profit Environmental Law Firm

December 29th, 2005

Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114

Incoring
4/15/2018

RE: Pacificorp Deer Creek Mine Permit Renewal Application Request for Informal Conference

To Whom It May Concern:

This request for an informal conference is being filed on behalf of Utah Environmental Congress for the above permit renewal. Utah Admin. Code R645-300-123. It is being filed concurrently with UEC's formal objection that will form the basis of issues to be discussed during informal conference. These issues are outlined in UEC's objection and include but is not limited to the issue of Forest Service authority to authorize measures designed to protect the surface environment and the points raised in UEC's appeal filed to the U.S. Forest Service. It is attached to UEC's objection. UEC hopes to discuss several of the terms of the agreement that the UEC signed with the U.S. Forest Service.

UEC would prefer to have the conference located in Salt Lake City as opposed to the locale of the coal mine in question. However, UEC would request that the U.S. Forest Service and Alice Carlton attend the conference. UEC does not oppose the conference being held in Price since this is where the Manti La Sal National Forest is located and is proximate to the mine in question.

Sincerely,



Joel Ban
Wildlaw (on behalf of UEC)

RECEIVED

DEC 29 2005

DIV OF OIL, GAS & MINING

WildLaw

A Non-profit Environmental Law Firm

December 29th, 2005

Utah Division of Oil, Gas, and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84114

RE: Pacificorp Deer Creek Mine Permit Renewal Application Objection

To Whom It May Concern:

This objection is being filed on behalf of the Utah Environmental Congress (UEC) for the above referenced project located on the Manti-La Sal National Forest. Utah Admin. Code R645-300-122. We are concurrently filing a notice for request of an informal conference. Utah Admin. Code R645-300-123. It is our hope that UEC's objection to the currently proposed project can be resolved through such a conference. Our objection mainly pertains to the points raised in the negotiated agreement UEC reached with the Manti-la Sal National Forest, by and through its Forest Supervisor Alice Carlton. Attached. However, there are a number of other violations that the UEC has identified associated with this project. UEC also believes that UDOGM and some other federal agencies misinterpret applicable statutes and regulations related to this project, and it is our sincere hope that all parties can resolve these disputes through an informal conference.

Some preliminary interpretations of the extent of UDOGM's authority to implement NEPA are at issue. Within the Deer Creek EA it states that OSM has delegated the preparation of the EA to DOGM with OSM assistance where appropriate. EA, p. 4. The regulations allow UDOGM authority to prepare an EA, but explicitly state that OSM will continue to be responsible for NEPA responsibilities in the following areas:

- i. Determining the scope, content and format and ensuring the objectivity of NEPA compliance documents;
- ii. Making the determination of whether or not the preparation of an environmental impact statement is required.
- iii. Notifying and soliciting views of other state and federal agencies, as appropriate, on the environmental effects of the proposed action;
- iv. Publishing and distributing draft and final NEPA compliance documents;
- v. making policy responses to comments on draft NEPA compliance documents;
- vi. independently evaluating NEPA compliance documents; and
- vii. Adopting NEPA compliance documents and determining federal actions to be taken on alternatives presented in such documents. 30 C.F.R. §740.4(c)(7).

It appears that the responsible agencies were not in compliance with this particular provision. With respects to the 1st point from the above regulation UEC received scoping notices from the Forest Service and UDOGM for this project, but never from OSM as the regulation requires. For the 2nd point above the decision to not prepare an EIS appears to have been made by the Forest Service, but not UDOGM or OSM. This would seem to violate the above regulation. The fourth requirement from the above regulation would seem to require OSM to circulate the draft NEPA document, however this was never done. For the other requirements pursuant to the above regulation it is unclear whether OSM complied with these provisions as UEC does not sufficient information to evaluate compliance. This is not an authoritative analysis of UDOGM'S role in the NEPA process vis a vis other agencies. If other statutes/regulations clarify this issue please provide the relevant citations so this issue can be resolved for future projects.

On page 4 of the EA it also states that based on section 523(c) of SMCRA UDOGM is permitted to regulate surface coal mining operations and surface effects of underground mining. It is UEC's belief that the primary agency charged with protection of surface resources is the Forest Service since they are the federal land management agency in this case. Furthermore, this section of SMCRA does not charge UDOGM with authority to regulate activities pertaining to surface effects on Forest Service land.

Under section 523(c) of SMCRA, a State with an approved State program may enter into a cooperative agreement with the Secretary of the Interior (hereinafter referred to as the Secretary) to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State.

If UEC is incorrect in this interpretation of this section of SMCRA please provide the specific portion of SMCRA or the Mineral Leasing Act (MLA) that allows state regulators like UDOGM to regulate surface effects on lands managed by the U.S. Forest Service. Regulations under the (MLA) require that leases be issued only with the consent of the agency that has jurisdiction over the lands that contain the coal deposits. 43 C.F.R. §3400.3-1. These leases are also subject to certain conditions that the federal land management agency may prescribe for the protection of those lands. Id.

The federal land management agency, in this case the U.S. Forest Service is responsible for:

1. Determining post-mining land uses;
2. Protection of non-mineral resources. 30 C.F.R. §740.4(e).

The rights of the U.S. Forest Service were affirmed in a letter dated December 1st, 2005 from Alice Carlton, Forest Supervisor of the Manti-La Sal National Forest to Mary Ann Wright, Associate Director of Mining at UDOGM. A copy of this letter is attached for easy reference to the letter's main points. UEC and the Manti-La Sal National Forest made fruitful efforts to work together and agreed to take certain measures to protect the surface environment in November of this year. The parties agreed to protect the surface environment through macroinvertebrates monitoring and maintenance of a BCI level for macroinvertebrates. In addition, the parties agreed that the 200 acres of timber would not be harvested. It is our understanding that based on objections from UDOGM and the permittee the agreement was breached by Alice Carlton on

November 28th. It is UEC's belief that its appeal raised several viable appeal points, and that the Forest Service was well within its authority to take these reasonable measures to protect the environment. If UDOGM disagrees that the Forest Service was within its authority in reaching this agreement please provide explanation based on applicable statutes and regulations. UEC was willing in the past to make further concessions in this agreement; however these attempts were apparently rejected by some interested parties. It is our hope that this objection process will allow the relevant parties to resolve some of these unresolved points.

Of course UEC's attempts to resolve this appeal are based on apparent violations of law outlined in its appeal. Some of violations of law are based on the National Environmental Policy Act (NEPA), and I would refer you to the attached appeal for a detailed discussion of those violations. Needless to say it appears that the Forest Service's Finding of No Significant Impact (FONSI) is not based on sufficient evidence.¹ Many federal courts have held that an agency must produce a convincing and well-supported document that supports a FONSI.² The EA failed to do this. Impacts from the road, road construction, and water and aquatic habitat quality suggest there will be significant impacts to the environment.

The EA states there will be impacts to the Management Indicator Species (MIS) and Forest Service Sensitive species Golden Eagle. The EA notes on page 34 how the project could cause the eagle to abandon its territory. The Manti La Sal National Forest Plan prohibits activities that could cause abandonment of active nests. Plan, III-20. How the impacts to big game MIS such as deer and elk are insignificant is unknown as well. Elk will incur direct/indirect effects for 30 years, and are also like to suffer due to the cumulative effects of future management activities.

Additionally, it appears that the EA failed to analyze the impacts from the change in right of way, additional traffic on highway U-31, and the other projects associated with water drilling in Rilda Canyon. These actions, left analyzed, leave the agencies unable to determine whether there will be significant impacts to the environment.

The applicable agencies clearly violated NFMA and the Manti-La Sal National Forest Plan by failing to monitor the population trends of MIS goshawk, elk, mule deer, macroinvertebrates, and golden eagle. Please see UEC's appeal on this issue located on page 11 of the appeal. Additionally, Forest Plan standards for macroinvertebrates are not being met and will not be met for the diversity index (DAT) or Biotic Condition Index (BCI).

The EA does not mention or discuss the direct and indirect effects of the proposed "mitigation" to log 200 acres as a part of this project. Under NEPA the direct and indirect effects of a project must be analyzed. 40 C.F.R. §1508.7 §1508.8. It is hard to understand how such an activity will mitigate environmental damage as opposed to being the cause of environmental damage. An EA must provide a detailed analysis of proposed mitigation measures. O'Reilly v. U.S. Army Corps of Engineers, 2004 WL 1794531 (E.D.La.,2004). This is a fundamental flaw and should be dropped as a component of the project.

¹ It is unclear if UDOGM also intends to issue a FONSI as the Forest Service did.

² See Pac. Marine Conservation Council v. Evans, 200 F. Supp. 2d 1194, (D. Cal. 2002); Sierra Club v. United States DOT, 243 U.S. App. D.C. 302, (D.C. Cir., 1985) Makua v. Rumsfeld, 136 F. Supp. 2d 1155, (D. Haw., 2001).

Please consider these issues carefully so that the informal conference is as constructive as possible. Also please don't hesitate to contact me with any questions. Thank you and please consider the attachments to this objection as well.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joel Ban Wildlaw', written over the printed name.

Joel Ban
Wildlaw (on behalf of UEC)

Attachments

Letter from Alice Carlton to Mary Ann Wright 12/1/05

Appeal Resolution between UEC and the Manti La Sal National Forest 11/4/05

UEC Administrative Appeal to the Manti La Sal National Forest

INFORMAL CONFERENCE
DEER CREEK MINE
C/015/0018
JANUARY 24, 2006

Name	Company	Telephone Number
Joe I Bar	Wildlaw	801-471-2626
Jeff M'Kenzie	BLM State Office	801-539-4038
Stephen Falk	BLM - Price	435-636-3605
Steve Rigby	BLM/FS Price	435 636 3604
Bonnie Grobaugh-Hig	DOG M	801-538-5268
Vicky Miller	Dugout/CFC	435 636-2869
Gregg Galecki	Skyline /CFC	435 448-2636
Wayne Hedberg	DOG M	801-538-5286
Terriann Erntsen	DOG M	538 5214
Kevin Mueller	UCL	801 466-4055
SCOTT CHILD	PACIFICORP / ENERGY WEST MINING	801-220-4612
JOHN S. KIRKHAM	STOEL RIVES	(801) 578-6956
CHUCK SEMBORSKI	PACIFICORP / ENERGY WEST	(435) 687-4720
XEN FLECK	PACIFICORP / ENERGY WEST	(435) 687-6638
Ray O. Petersen	Emery County	435 381 5552
Mary Ann Wright	Oil, Gas, Mining	801-538-5306

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DEPOSITION CONFIRMATION

DATE: January 9, 2006
TO: Vickie Southwick
FIRM: Division of Oil, Gas, & Mining
FAX NO: 359-3940
FROM: Evelyn Merrill
RE: Confirmation of Assignment

On behalf of Thacker + Co, we **thank you** for scheduling your board meeting with us.
This fax will confirm that we will have a court reporter present on the date shown below.

CASE INFORMATION

Assignment Date/Time: January 24, 2006 @ 10:00 a.m.
Location: Division of Natural Resource, Room 1010
Case Name: informal hearing
Special Requests:

QUESTIONS or CHANGES REGARDING THIS ASSIGNMENT

In the interest of time, accuracy and consistency, please notify our office with any changes, additions or specific requests you may have regarding this assignment

Thank you for your confidence in our services and if we can assist you further in any way regarding this or any other assignment, please call us.

Corporate Offices: 50 West Broadway, Suite 900, Salt Lake City, UT 84101

<p style="text-align: right;">Page 1</p> <p>1 BEFORE THE DIVISION OF OIL, GAS AND MINING 2 DEPARTMENT OF NATURAL RESOURCES 3 STATE OF UTAH 4 IN THE MATTER OF THE 5 DEER CREEK MINE, PERMIT Cause No. C/015/0018 6 RENEWAL APPLICATION, 7 CARBON COUNTY, UTAH. 8 ~~~~~ 9 INFORMAL CONFERENCE 10 ~~~~~ 11 TAKEN AT: Department of Natural Resources 12 1594 West North Temple 13 Salt Lake City, Utah 14 15 DATE: January 24, 2006 16 17 REPORTED BY: Scott M. Knight, RPR 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 Informal Conference 2 January 24, 2006 3 PROCEEDINGS 4 MR. BAZA: My name's John Baza. I'm 5 the director of the Division of Oil, Gas & 6 Mining. And I am the designated presiding officer 7 for this informal conference. And this is an 8 informal conference being held in the matter of 9 the Deer Creek Mine permit renewal application in 10 Carbon County. It's designated as Cause No. 11 C/015/0018. 12 I'm going to make a few opening 13 remarks. And then we'll take comments from 14 parties in this. First of all, this informal 15 conference is being held at the request of Utah 16 Environmental Congress and pursuant to Utah 17 Administrative Code R645-300-123. The division's 18 conducting this hearing in accordance with the 19 Utah Administrative Procedures Act, Utah Code 20 Section 63-46b-5. 21 The purpose of the informal conference 22 is for any affected party to testify, present 23 evidence or comment on the issues involved in the 24 renewal of PacifiCorp's Deer Creek Mine permit. 25 For the sake of expediency and to keep the</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES 2 3 PRESIDING OFFICER: 4 John Baza, Director of the Division of Oil, Gas & 5 Mining 6 7 FOR THE PRESIDING: 8 Keli Beard, Assistant Attorney General 9 10 OFFICER: 11 FOR THE DIVISION OF OIL, GAS & MINING: 12 Steven F. Alder, Assistant Attorney General 13 14 FOR UTAH ENVIRONMENTAL CONGRESS: 15 Joel Ban 16 Kevin Mueller 17 1817 South Main Street, Suite 10 18 Salt Lake City, Utah 84115 19 20 FOR PACIFICORP: 21 John S. Kirkham, Esq., 22 STOEL, RIVES 23 201 South Main Street, Suite 1100 24 Salt Lake City, Utah 25</p>	<p style="text-align: right;">Page 4</p> <p>1 meeting moving, I'm going lay out a few ground 2 rules that I desire and then follow up with what 3 will proceed subsequent to this informal 4 conference. 5 So I'm going to indicate that the 6 following procedure should apply to this informal 7 conference. First of all, I would ask that those 8 parties who are here, in order to keep things 9 moving, I'd like to limit their presentations to 10 no more than 30 minutes for any testimony, 11 evidence, or comment that they want to provide. 12 I'm also going to indicate that 13 there's--this is not an opportunity for back and 14 forth discussion or cross-examination. Please 15 direct all your comments and questions to me as 16 the presiding officer and refrain from discussion 17 with other parties involved, including the 18 Division. 19 All parties have access to the 20 information in the Division's files to the extent 21 required by law. And those are public records 22 and are available for review in our public 23 information center. So if you have not yet had 24 the opportunity to review what is in our public 25 information center, you certainly will prior to</p>

1 (Pages 1 to 4)



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<p style="text-align: right;">Page 5</p> <p>1 the Division issuing any final decisions on this. 2 And as the presiding officer, I'll 3 issue an order upon closure of the informal 4 conference providing any decision that must be 5 reached and the reasons for that decision. I 6 will be--not be making any decision on the merits 7 of the application as the Division will do that 8 in the course of reviewing the permit renewal and 9 in accordance with established rules. 10 I'd like to go on and indicate what we 11 view both in the Division and our attorneys as 12 far as the following standards, which apply to 13 applications for renewal. 14 First of all, a valid coal mining 15 permit carries with it the right of successive 16 renewal. This is referenced to Utah Code Section 17 40-10-9, Part 4A. The Division is obligated to 18 issue this renewal unless certain conditions 19 apply. One is that the terms and the conditions 20 of the permit are not satisfied. Two would be 21 that the coal mining operation is not in 22 compliance with the approved plan. Three, that 23 the operator does not have evidence of liability 24 insurance as required under the rules. Four, that 25 the renewal would substantially jeopardize the</p>	<p style="text-align: right;">Page 7</p> <p>1 MR. BAZA: Let's just identify any 2 other parties who are interested in commenting on 3 the record today. 4 MR. KIRKHAM: John Kirkham of the 5 Stole, Rives law firm, appearing on behalf of 6 PacifiCorp. And we have Scott Child from 7 Interwest and Chuck Semborski from Energy West. 8 MR. BAZA: Okay. Anyone else? 9 MR. ALDER: The Division would like to 10 respond, but we aren't necessarily going to make 11 any comments. 12 MR. BAZA: Very well. So as I 13 indicated in our ground rules today, I'd like each 14 of the parties who wish to comment on the record 15 to limit their information presented to 30 16 minutes. If there's additional information that 17 you would like to submit in writing, I will 18 provide you with enough time to do that before we 19 close out the informal conference. 20 So with that being said, Mr. Ban, I'll 21 turn the time over to you and let you proceed 22 with your presentation. 23 MR. BAN: Okay. Just to go over the 24 main points of our objection, the objection was 25 filed--it's based on a history of events. In</p>
<p style="text-align: right;">Page 6</p> <p>1 operator's responsibility on the approved plan. 2 Five, that the operator has not provided evidence 3 that the bond will continue to be in effect. Or 4 six, that any additional information required by 5 the Division has not been provided. 6 And these, as I said, are in accordance 7 with Utah Code Section 40-10-9 and also Utah 8 Administrative Code Rule R645-303-233. 9 Interested parties have the right to 10 challenge any decision made by the Division to the 11 Board of Oil, Gas & Mining. And should a party 12 choose to challenge the Division's decision, the 13 burden of proof will rest with the opponents of 14 renewal. 15 So that being said, I'd like the 16 parties who wish to present information or comment 17 today to please identify themselves. I know that 18 the letter of objection received was received from 19 Mr. Joel Ban for the Utah Environmental Congress. 20 And if you could state your name again for the 21 record. 22 MR. BAN: My name's Joel Ban. And I 23 work and represent the UEC. To my right's Kevin 24 Mueller. He's the director of UEC. Do you want 25 me to--</p>	<p style="text-align: right;">Page 8</p> <p>1 October of '05, the UEC had filed an appeal, 2 administrative appeal to the Forest Service based 3 on a number of violations of NEPA as well as the 4 Manti La Salle Forest Plan. These violations are 5 related to the fact that the EA in this case made 6 a finding of no significant impact. However, 7 we're not sure that all the effects of the 8 proposed mining portal were analyzed. 9 The EA had made a finding of no 10 significant impact. However, there were a number 11 of effects that weren't analyzed, including the 12 effects of the golden eagle. The Manti La Salle 13 Forest Plan does, in fact, prohibit the nest 14 abandonment of golden eagles, which the EA had 15 disclosed--was a likely impact from the proposed 16 activities. 17 There are a number of issues that we 18 enclosed in our objection that hopefully the 19 Division and PacifiCorp have reviewed. And I'm 20 not going to go into the details of the appeal. 21 The objection was filed mainly because 22 the UEC had entered into informal appeal 23 resolution with the Forest Service. I wasn't 24 intimately involved in those discussions. 25 However, Mr. Mueller had detailed discussions, I</p>

2 (Pages 5 to 8)



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<p style="text-align: right;">Page 9</p> <p>1 know, with Ms. Alice Carlton from the Manti La 2 Salle. She's the forest supervisor on the Manti 3 La Salle. And I think those began in--October or 4 November-- 5 MR. MUELLER: Yeah. Both of those 6 months, I believe. 7 MR. BAN: --yeah, October and November 8 of '05. And based on a lot of drafting of 9 documents that included a lot of editing, I know 10 the UEC and the Manti La Salle had entered into 11 what appeared to be a contract for the resolution 12 of that appeal. 13 Based on subsequent discussions that 14 Ms. Carlton had had with--apparently with UDOGM 15 and PacifiCorp, that contract was breached later 16 that month, in November. And as a result, UEC 17 had the opportunity to present some of these 18 issues for this objection process, which--I 19 believe that this contract or at least some of 20 the terms of the contract should try to be 21 resolved through this objection process and 22 perhaps some of the terms can be--I don't know if 23 they can become a part of the new contract or if 24 the parties can informally agree to abide by some 25 of these terms, that could be discussion for this</p>	<p style="text-align: right;">Page 11</p> <p>1 add some-- 2 MR. MUELLER: Well, I know as this--as 3 the process has evolved, you know, everybody here 4 should know, you know, this project is better than 5 it was--what--three or four years ago when an 6 original proposal was to put the facilities right 7 on top of the creek and culvert the creek. So 8 it's come a long way from the initial proposal 9 from the company. 10 It could still be made a better 11 proposal--a better project that accomplishes the 12 objectives and the needs while ensuring better 13 environmental protection and monitoring occurs. 14 And that's where we're interested in seeing if 15 this objection process, which is new to the Utah 16 Environmental Congress and Wildlaw. We've never 17 been involved in this before, so we're hoping we 18 can--you know, that this process will avail itself 19 to make an improved decision that accomplishes the 20 objectives and attain a further degree of 21 environmental protection that is possible. 22 Additional concerns came out after the 23 appeal resolution was signed with the Manti La 24 Salle. And we found out that there--you know, 25 there was some kind of political back and forth</p>
<p style="text-align: right;">Page 10</p> <p>1 objection--however, we do feel that some of the 2 underlying problems with the situation is that the 3 Forest Service in this informal appeal resolution 4 period had agreed to take certain measures to 5 protect the surface environment, which the Forest 6 Service is entitled to do. 7 And it seems that the--some of the 8 other parties involved had aired their opinion 9 that the Forest Service didn't have the authority 10 to interject these certain provisions into this 11 contract. 12 So at this time, we hope that certain 13 monitoring will occur. The monitoring of micro- 14 invertebrates. We do know that this project will 15 inflict short-term major effects on the ecosystem, 16 specifically the watershed within Deer Creek, as 17 well as impacts to the golden eagle, which I 18 alluded to before, the--certain mitigation 19 measures were proposed that weren't discussed in 20 the EA. We feel that's a major flaw within the 21 analysis. And there are certain other provisions 22 of SMCRA and the mineral leasing act, which we 23 don't feel were complied with in terms of the 24 overall NEPA process for this particular project. 25 And I don't know if Kevin might want to</p>	<p style="text-align: right;">Page 12</p> <p>1 between DOGM, Forest Service, the mine. I don't 2 know who else. But it became clear that the 3 Forest Service feels unempowered to manage a lot 4 of surface facilities. And that's something that 5 is a new concept to me. You know, in reviewing 6 some of the new--the regulations that we don't 7 usually deal with, such as SMCRA and--it doesn't 8 look like the Forest Service has, you know, in 9 the legal realm, lost its authority to manage the 10 surface to the degree that it appears that in 11 reality it has. And that's a concern that 12 emerged after the appeal resolution process with 13 the Forest Service. 14 That's something that really concerns 15 me, because it's not just an issue with this 16 facility and this mine and the mine plan 17 modification, but for the ability of agencies to 18 work together into the future and the ability of 19 the Forest Service to maintain its legally granted 20 surface control authority, especially to commit to 21 terms in the forest plan that the Forest Service 22 apparently feels unempowered to be able to commit 23 the mine to sticking with. That's a real 24 concern, because it makes the forest plan 25 meaningless. You know, if you have monitoring,</p>

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<p style="text-align: right;">Page 13</p> <p>1 know, standards and guidelines in the plan that 2 when a project is approved, are not really 3 applied, then the plan is a useless document. 4 And that's a real fundamental concern. 5 I don't know if this process is 6 precedent setting or if this is something that's 7 been happening for a long time with the coal 8 mines on Forest Service lands. 9 MR. BAN: And just to add something to 10 that note is UEC, my client, watches over projects 11 across the entire State, especially in the Manti 12 La Salle. And I know the Forest Service isn't 13 here, but--and I know PacifiCorp is probably more 14 interested in this project than the other projects 15 that UEC watches over. But UEC feels in this 16 case--could be precedent setting, because if the 17 Forest Service isn't able to protect the surface 18 environment in this case, then other projects that 19 are proposed down the road that have similar 20 surface impacts and other projects that have been 21 implemented in the past will--they'll be similarly 22 unable to assert their authority to protect the 23 surface environment on projects that occur on 24 those lands. 25 And we feel this is a big problem,</p>	<p style="text-align: right;">Page 15</p> <p>1 purpose, which is to resolve conflicts and result 2 in better decision making. 3 MR. BAZA: We're in receipt at the 4 Division of your letter dated December 29. It 5 was received on December 29 of 2005. I believe 6 that's the one you're referring to in terms of 7 the information you've already presented. 8 MR. MUELLER: Yeah. 9 MR. BAZA: And--I had a couple of 10 questions. And I don't know if--have you got 11 more information that you wanted to present or 12 discuss in addition to what you've said in this 13 letter? 14 MR. BAN: Maybe in response to 15 something you say or PacifiCorp says, but not at 16 this time. 17 MR. BAZA: Okay. One question I have 18 is the--this project, or this decision making that 19 we're going to right now is a permit renewal 20 application. And I believe that some of the 21 comments that you've made were in reference to a 22 decision on Rilda Canyon expansion. Okay? Do 23 you view those as being connected or--it seemed to 24 me that the decision making process for the Rilda 25 expansion we've gone through that already. Is</p>
<p style="text-align: right;">Page 14</p> <p>1 which is, you know, arisen in the past and could 2 also be a problem in the future. And we hope 3 that certain--there's a certain understanding 4 among this agency as to what their role is in 5 terms of projects that occur on Forest Service 6 land. So that's kind of another goal, I guess, 7 of UEC at this time. 8 MR. MUELLER: And I think it's evident 9 in the--you know, the objection that the attached 10 appeal, that we believe it's clear that there 11 should have been an EIS process. And the 12 mitigation measures that were committed to should 13 have been analyzed under that and addressed and 14 committed to under that EIS process, because there 15 are significant impacts from this project 16 cumulatively. And the mitigation measures that 17 were committed to, some weren't even addressed in 18 the EI--in the EA process. And some of the 19 mitigation measures we believe will actually 20 increase the total impacts on wild life and on 21 the watershed as opposed to reducing the impacts. 22 And--but that's a concern that obviously couldn't 23 be addressed in the resolution process or the 24 objection process here. But we're hoping to be 25 able to make this process avail itself of its</p>	<p style="text-align: right;">Page 16</p> <p>1 there a connection between this permit renewal and 2 the Rilda Canyon expansion, in your viewpoint? 3 MR. BAN: Kevin may feel differently, 4 but I thought I was commenting just on the portal 5 construction and the permit renewal. I don't 6 think I was commenting on the Rilda Canyon. 7 MR. BAZA: Okay. So your comments are 8 really directed towards the permit renewal of the 9 Deer Creek Mine. 10 MR. BAN: I believe so. 11 MR. BAZA: Okay. So when you referred 12 to the project, that's the project at hand is the 13 permit renewal. 14 MR. BAN: Yes. 15 MR. BAZA: Okay. Well, I guess Mr. 16 Kirkham, we'll turn some time over to you to make 17 some comments. 18 MR. KIRKHAM: Thank you, Mr. Baza. As 19 indicated, I think maybe we need to just review 20 for the record--and I'll try not to repeat what 21 you've already reviewed--but for the record, the 22 current status of the PacifiCorp permit is that 23 there are no pending permit revisions. The mine 24 permit has been fully approved. And there are no 25 pending appeals or unresolved issues related to</p>

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<p style="text-align: right;">Page 17</p> <p>1 the mine permit. Again, for the record, the 2 Division's last action with--in connection with 3 the revision to the permit took place on July 27 4 and was accepted by PacifiCorp on August 5. 5 As indicated, there was an appeal filed 6 within the Forest Service appeal process. That 7 appeal has subsequently been denied. And there 8 was no further appeal of that denial. 9 On December 21, the assistant secretary 10 of the Department of the Interior approved the 11 action of the Division. And there is currently 12 no pending Federal action that brings into any of 13 the current process before the Division the 14 National Environmental Policy Act, or NEPA. 15 Separate and apart from the revisions 16 that were made and approved, the permit is subject 17 to renewal as of February 7, 2006. PacifiCorp 18 made a timely submission of a renewal application 19 on October 6, 2005. That submission was 20 determined administratively complete by the 21 Division on October 24 of 2005. The notice 22 that's required under the rules was published on 23 November 8. And the date of last publication was 24 November 29. 25 Also, the Division is required to</p>	<p style="text-align: right;">Page 19</p> <p>1 permit renewal. And, again, since they didn't 2 address any of those issues and since you've 3 already reviewed them, I won't go through them 4 again. 5 But I think that it's appropriate to 6 respond to a couple of things that UEC talked 7 about. One was a violation of NEPA. As I've 8 indicated, there is nothing in this renewal 9 process that involves NEPA at all. There are no 10 Federal agencies that are making a decision here. 11 And there is no trigger that brings this within 12 the jurisdiction of NEPA. 13 There was reference made to 14 negotiations with the Forest Service. I think 15 it's appropriate to indicate for the record that 16 at the time UEC was having those negotiations with 17 the forest supervisor, the jurisdiction for the 18 specific revision that has subsequently been 19 approved was not at this forest supervisor level 20 within the process. 21 A reference was made to a contract that 22 was breached. Well, there was no contract that 23 had anything to do with anything. The 24 jurisdiction for all of those matters was to the 25 extent it existed, within the appeals Division of</p>
<p style="text-align: right;">Page 18</p> <p>1 publish a notice in connection with that renewal 2 process. And that occurred on November 15. As I 3 think you've indicated, the application review 4 deadline was December 29. And a written objection 5 was filed on December 29, which is the reason for 6 this informal conference. 7 Again, as you have stated, the 8 permittee has a right of renewal. And the 9 Division, under both the statute, which you've 10 cited as 40-10-9(4)(a), provides that the Division 11 shall renew the permit unless it enters very 12 specific findings, which you previously outlined, 13 and I won't review again. 14 I think the critical thing here is that 15 under both the statute and specifically under the 16 provisions of R645-303-233.200, the burden of 17 proof--and let me just quote that--it says, "In 18 the determination of whether to approve or deny a 19 renewal of a permit, the burden of proof will be 20 on the opponents of renewal." 21 And as we've listened to the position 22 of UEC--and I think I took notes that would try 23 to address these issues--there was nothing in 24 their presentation that related to any of the 25 criteria the Division looks at with respect to</p>	<p style="text-align: right;">Page 20</p> <p>1 the Forest Service. 2 Concerns were expressed over the Forest 3 Service authority as the surface management agency 4 and the processing of what I assume were 5 revisions. In connection with a permit renewal, 6 since it is an absolute right of renewal, unless 7 the Division enters certain specific findings, 8 there is no Forest Service jurisdiction in 9 connection with this renewal process that is under 10 way right now. 11 I should also point out that SMCRA does 12 establish the roles of the various respective 13 agencies in connection with both the permitting 14 process and the renewal process. And that's not 15 an issue that is within the jurisdiction of the 16 Division to try and be dealing with. 17 Based upon everything we've heard--and 18 specifically, since we did not hear anything that 19 relates to any of the criteria that the Division 20 has to review in connection with the renewal, it 21 appears to us that what was raised related solely 22 to what was the prior appeal that the objecting 23 party, UEC, brought, and had subsequently lost. 24 And so we don't feel there's any reason 25 to try and relitigate those issues in this renewal</p>

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<p style="text-align: right;">Page 21</p> <p>1 process. The Division is required to take action 2 by February 7 on the renewal application. And we 3 just encourage the Division to grant the renewal. 4 MR. BAZA: Okay. I also have a couple 5 of questions for you, then, Mr. Kirkham. 6 MR. KIRKHAM: Great. 7 MR. BAZA: The--you said the permit was 8 subject to renewal on February 7 of 2006. Do you 9 have a rule citation for that-- 10 MR. KIRKHAM: A rule citation? No. 11 That's in the permit itself. 12 MR. BAZA: It's in the permit itself. 13 MR. KIRKHAM: Yeah. That's the date 14 that is specified in the permit itself. 15 MR. BAZA: Okay. And then-- 16 MR. KIRKHAM: I might just add to that, 17 the rule does require that a permit application be 18 filed 120 days prior to that date. And that's 19 the date that I indicated the application was 20 timely submitted. 21 MR. BAZA: Okay. And then a subsequent 22 question. You indicated in your opinion that 23 there was nothing really presented by UEC that 24 relates to renewal criteria. And I reference 25 those renewal criterias here. As I was making my</p>	<p style="text-align: right;">Page 23</p> <p>1 asked for under any of those provisions. I 2 suspect the kinds of things that the Division 3 might ask for would be things that relate directly 4 to the criteria, such as providing evidence of 5 insurance, providing evidence that the bond was in 6 place, those kind of things. 7 MR. BAZA: So in your opinion, the 8 Division's action to determine the renewal 9 application is administratively complete was the 10 opportunity for the Division to ask for those-- 11 MR. KIRKHAM: Correct. 12 MR. BAZA: --additional pieces of 13 information at that time. 14 MR. KIRKHAM: Yes. 15 MR. BAZA: Okay. Anything further, Mr. 16 Kirkham? 17 MR. KIRKHAM: I believe that's it. 18 MR. BAZA: Okay. Mr. Alder, you 19 indicated you may want to say something. Is 20 there--are you-- 21 MR. ALDER: Yes. We might feel--I just 22 want to reserve the right to reply if necessary. 23 I don't think it is necessary at this time. 24 MR. MUELLER: May-- 25 MR. BAZA: Yeah. I think we offer an</p>
<p style="text-align: right;">Page 22</p> <p>1 opening comments, there's one of those renewal 2 criteria I'd like your opinion on, which is Item 3 No. 6, which is any additional information 4 required by the Division that has not been 5 provided. Would you comment on that and what--in 6 your opinion, what types of items would be 7 addressed in that particular criteria? 8 MR. KIRKHAM: Sure. That--just for the 9 record, that requirement is found two places. In 10 the statute, it's at 40-9--I'm sorry--40-10-9 11 (4)(a), I believe it's small 5, or Roman numeral 12 V, states, "Any additional, revised, or updated 13 information required by the Division has not been 14 provided." And then the appropriate rule is, 15 again, R645-303-233.160. And that states, 16 "Additional revised or updated information 17 required by the Division under R645-303-232.250 18 has not been provided by the applicant." And a 19 reference to 250 just is simple--a simple 20 statement, "Additional revised or updated 21 information required by the Division." 22 Long introduction, short answer. The 23 Division determined the application to be 24 administratively complete on October 24. 25 Therefore, there was nothing that the Division had</p>	<p style="text-align: right;">Page 24</p> <p>1 opportunity now for UEC to respond, to add any 2 additional information you want to include on the 3 record. 4 MR. BAN: Can I ask questions of the 5 Division? 6 MR. BAZA: I can say this. You can ask 7 the questions, but you may not be able to get the 8 answers today. 9 MR. BAN: Okay. 10 MR. BAZA: But go ahead and ask your 11 questions. 12 MR. BAN: Anyone can respond to this, I 13 guess. It's kind of directed towards the Division. 14 I mean, I was wondering if the Division had a 15 role in preparing the NEPA document for the EA 16 for the permit renewal and whether or not they 17 had a role in making the decision to make a 18 finding of no significant impact and what the 19 Division views its role in preparing the NEPA 20 document. 21 Those are the questions that I have, 22 because it seems from the regulations that they 23 clearly do have a role within the NEPA process 24 that the Forest Service apparently had issued the 25 finding of no significant impact. However, it</p>

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<p style="text-align: right;">Page 25</p> <p>1 seems from what the PacifiCorp representative was 2 saying was that they issued--the UDOGM issued a 3 decision in--when was it? 4 MR. MUELLER: That was in--July 27. 5 That was for the modification. 6 MR. BAN: Right. They issued a 7 decision in July 27. But the decision to make a 8 finding of no significant impact wasn't made until 9 later in the fall. And I'm just curious as to 10 what the Division's role in making that finding 11 was. 12 MR. KIRKHAM: Mr. Baza, I know we're 13 not in a formal process, but--and so I won't 14 couch this as an objection. But I would state 15 for the record that none of that is relevant to 16 the renewal process. That had to do with the 17 revision process that has now passed and gone. 18 The renewal process was not even initiated until 19 October 6 and is not an action that involves NEPA 20 at all. 21 MR. BAN: I guess we're here because 22 we're concerned with the NEPA aspect of the 23 project. And certainly we're concerned with the 24 surface environment and the compliance with the 25 plan.</p>	<p style="text-align: right;">Page 27</p> <p>1 Kirkham--is that-- 2 MR. KIRKHAM: Yes. 3 MR. MUELLER: --is that right? John 4 made a reference to no need to relitigate 5 something having to do with PacifiCorp. I just 6 wanted to clarify. At least as far as UEC and 7 Wildlaw are concerned, we've never been involved 8 in any litigation relating to the mine or the 9 permitting. I just want to make that clear. So 10 maybe there's been other litigation from other 11 organizations or interested parties. I don't 12 know. I just want to make that clear. 13 John made the point that the last 14 action for the mine plan--I think it was the 15 modification--was in July '05--July 27, I think. 16 And I just wanted to note that the Forest 17 Service--I think this is part of the confusion and 18 gets at the conflict in why we're here. Forest 19 Service consent for that was issued on December 1, 20 2005. If you don't have a copy--I assume 21 everybody does have a copy right in front of-- 22 MR. BAN: It's attached to the 23 objection. 24 MR. MUELLER: So I think that gets-- 25 that just highlights one of our concerns is that</p>
<p style="text-align: right;">Page 26</p> <p>1 We feel that any project that occurs on 2 Forest Service land must comply with the plan. 3 And, you know, the project has its--was analyzed 4 in the EA--will not comply with the plan and 5 won't comply with the micro-invertebrates 6 monitoring, the effects to golden eagles, the 7 sensitive species. And that's pretty much why 8 we're here. 9 And so--to meet some of these concerns, 10 we'd formed this contract, which we understand 11 UDOGM had a role in--maybe not a direct role that 12 was a contract between UEC and the Forest 13 Service--but we had pretty strong indication that 14 UDOGM was playing a hand in that--for that 15 particular contract. And it's still our hope that 16 we can try to counteract some of these concerns 17 that UDOGM may have had with that contract. In 18 light of this being an informal conference, we had 19 hoped to get some dialogue from the Division on 20 how we can resolve some of these conflicts. 21 So . . . 22 MR. MUELLER: Can-- 23 MR. ALDER: Mr. Baza? 24 MR. MUELLER: Perhaps I could--I just 25 wanted to make a couple of comments. First, John</p>	<p style="text-align: right;">Page 28</p> <p>1 the Forest Service has, in reality, lost its 2 control over even the ability to consent, because 3 the mine went ahead and--I guess it was the 4 last--the permit was issued in July, which was 5 months before the Forest Service consented. So 6 that's one of the larger problems dealing with 7 surface authority and the decision-making 8 process--and there--the less than perfect 9 relationship between agencies, where the Forest 10 Service has effectively lost its control of the 11 surface. 12 Now, in filing this objection, UEC had 13 hoped that this process would avail itself of 14 trying to resolve some of the concerns coming out 15 of that mine plan modification, even though this 16 is the renewal of the permit, in the form of 17 getting the terms of--at least the majority of the 18 resolution agreement that we signed with the 19 Forest Service incorporated into the permitting or 20 whatever the appropriate vehicle is. 21 Doesn't look like that's possible. But 22 I was hoping that this would be--you know, that-- 23 you know, a procedure, an administrative procedure 24 we could go through to air our concerns before, 25 you know, having to look at the next step, which</p>

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<p style="text-align: right;">Page 29</p> <p>1 would be litigation. Now, if the differences 2 between the permit renewal and the mine plan 3 modification from last summer are going to be 4 treated as so distinctly that they're--you know, 5 one is outside of the scope of the other within 6 this objection process, then so be it. 7 But I hope that we can just try to 8 incorporate some of the terms of the resolution 9 agreement to protect the surface in that area. 10 And that would be a way to get around having to 11 litigate for the first time with this and having 12 to do with the courts, because it's always easier 13 to deal with this stuff before you start. And 14 that's why I wanted to clarify when I started 15 that, you know, there has been no litigation so 16 far. It's all been, you know, administrative 17 procedures. 18 And--so perhaps I could end this with a 19 question that you can--I would hope you can answer 20 is--does this objection process with the permit 21 renewal--is it impossible to address some of the 22 concerns that I highlighted that I'd hoped we 23 could use this objection process for? 24 MR. BAZA: Well, I can give you an 25 opinion. And I'm not sure that this opinion is--</p>	<p style="text-align: right;">Page 31</p> <p>1 MR. MUELLER: Will there be an 2 opportunity after this meeting today to submit 3 additional information for you to consider? 4 MR. BAZA: I'm going to visit with 5 Counsel here about that. But I'd like to make 6 sure we have information--any information that 7 needs to be provided before I do that. And then 8 I can respond to that. 9 Mr. Alder, you've got your hand up back 10 there. 11 MR. ALDER: Well, I did want to--since 12 the question was directed to the Division, just 13 make it of record that the Division would be glad 14 to respond specifically to those questions after 15 they've had a chance to consult with the staff. 16 But it does appear on the surface, at least, that 17 there's not a clear understanding by UEC that--the 18 difference between the modification, which appears 19 to have run its course in the courts. They my 20 disagree to that--and the renewal. And I think 21 the burden of making the connection between the 22 modification terms and conditions that you're 23 upset about, whatever they are, which has not been 24 made clear, and how that becomes an issue in this 25 renewal, I just--I don't think that connection is</p>
<p style="text-align: right;">Page 30</p> <p>1 has a basis in legal argument or anything like 2 that. But I think that, as I stated in our 3 opening--in my opening statements, this is an 4 opportunity to provide information. And my 5 opinion is that if the information you're 6 providing or any party in this room providing is 7 constructive to the Division's process of renewing 8 the permit, then we'll use that. And we'll 9 utilize it. And we'll incorporate it into our 10 decision making. 11 But I also have the opinion that this 12 is the Division's decision to make. And if 13 there's a role for the Forest Service or any 14 other party in that decision, that there are 15 procedures in place to make sure it happens. 16 This informal conference is one of those 17 procedures. And so, if the Forest Service were 18 here and wanted to make comment at this time, 19 they are certainly welcome to do that too. 20 So I really am looking at this informal 21 conference as--just as a method of hearing from 22 interested parties on the permit renewal. And if 23 the Division can incorporate that into their 24 decision making at this point, then I certainly 25 expect that they will.</p>	<p style="text-align: right;">Page 32</p> <p>1 necessarily clear in UEC's mind. If it is, it's 2 certainly not been made clear to me. 3 MR. MUELLER: Perhaps I can try to 4 clarify that. 5 MR. BAZA: Go ahead. 6 MR. MUELLER: Again, this hasn't been 7 in litigation. It hasn't been in front of a 8 judge. It hasn't been in the courts. We're 9 renewing a permit that was modified. And there's 10 still an--ongoing concerns with the ways that it 11 was just modified in a matter of months ago. So 12 there are concerns with this--the permit basically 13 has some new conditions on it. And we have 14 concerns with the new permit that have never--were 15 not in existence the last time it was up for 16 renewal. 17 And you're right. The legal 18 differences between renewal and modification and 19 the ability of this administrative process or 20 objection process to try to air concerns and how 21 they overlap--you know, this is not a law that 22 UEC deals with a lot. So there may be confusion. 23 I'm not acknowledging that. I'm just saying maybe 24 there is. 25 But we were hoping that we could use</p>

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<p style="text-align: right;">Page 33</p> <p>1 this objection process to address some of those 2 concerns that we have with the--you know, the 3 recent modifications that were just consented to 4 on December 1 by the Forest Service, which 5 apparently weren't even incorporated, because it 6 was done last summer anyways. So that adds a 7 whole other layer of confusion as to exactly what 8 kind of permit animal is being renewed here, 9 because it's different from what the Forest 10 Service had even consented to. 11 So I do think there are real concerns 12 that have not been in front of a judge, have not 13 gone to court, that I was hoping we could use 14 this administrative process to resolve 15 productively. 16 Does that--I don't know if that helps. 17 MR. BAZA: I needed to ask a couple of 18 clarifying questions. Mr. Ban, a minute--a few 19 minutes ago, you talked about three questions that 20 you have for the Division. 21 MR. BAN: Yeah. 22 MR. BAZA: And I think I caught two of 23 them. I don't know if I caught all three. One 24 was, did the Division have a role in preparing 25 the NEPA document?</p>	<p style="text-align: right;">Page 35</p> <p>1 MR. MUELLER: Okay. 2 MR. BAZA: Mr. Kirkham. 3 MR. KIRKHAM: Do I get a chance to 4 respond? 5 MR. BAZA: You have your hand raised, 6 so I'll recognize you. 7 MR. KIRKHAM: Well--and I don't want to 8 prolong the agony here. But I think the 9 confusion is probably on the part of UEC. There 10 is a specific statutorily established method for 11 mine plan modification. Under the cooperative 12 agreement, there are specific roles that each of 13 the agencies plays--each of the agencies play. 14 That--and whether we're going to call it 15 litigation or whether we're going to simply say 16 they exhausted their administrative remedies, the 17 reality is that UEC raised those issues in the 18 administrative process leading up to the process 19 that granted the mine plan modification. That 20 exhaustion of administrative remedies, in my mind, 21 is litigation, because it went through the Forest 22 Service appeal process. 23 Now, admittedly, a Federal judge was 24 not involved in that. And so if that's the 25 distinction we're drawing, that's fine. But the</p>
<p style="text-align: right;">Page 34</p> <p>1 MR. BAN: Yes. 2 MR. BAZA: And this was the NEPA 3 document from this last year-- 4 MR. BAN: Yeah. 5 MR. BAZA: --that related to the mine 6 plan modification. 7 MR. BAN: I think it was the permit 8 renewal, wasn't it? 9 MR. MUELLER: That was the mine plan 10 modification. 11 MR. ALDER: Yeah. That's the 12 confusion. 13 MR. BAN: Okay. 14 MR. BAZA: Then your second question 15 was, what role did they play and what decisions 16 were reached? And third question, I missed if 17 there was one. 18 MR. BAN: Did they have a role in 19 issuing the finding of significant impact? 20 MR. ALDER: Issuing what? 21 MR. MUELLER: Well-- the only FONSI was 22 the Forest Service FONSI, unless the Division 23 issued one in July that we're not aware of. 24 MR. BAN: Just let him answer. 25 MR. BAZA: Okay.</p>	<p style="text-align: right;">Page 36</p> <p>1 Forest Service, at its appropriate place in the 2 administrative process that led up to the approval 3 of the mine plan modification, had a role to 4 concur. And this is not the correct forum to 5 debate the respective roles of those various 6 agencies. 7 This forum is to determine, under the 8 rules of the Division, whether or not the Division 9 is under the obligation to approve the renewal. 10 And the only way they can--that the Division can 11 deny the renewal is to specifically find in 12 writing that one of the elements under R645-303- 13 233 does not exist. And it is UEC's burden, as 14 the objecting party--it is their burden to prove 15 that one of those elements doesn't exist. It 16 isn't--we don't like it, it isn't "Gee, we wanted 17 to raise this issue previously." They have a 18 burden to establish that one of those elements has 19 not been satisfied. Otherwise, the Division, 20 under the language of the rule, will approve the 21 application for renewal. 22 And so I sympathize that they would 23 like to have their objections heard. And I think 24 they did. And I think PacifiCorp has gone out of 25 the way to try and respond to the concerns when</p>

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<p style="text-align: right;">Page 37</p> <p>1 the mine plan modification was being concerned. 2 But we're past that. That's all in the history 3 of this permit. We are now at the permit renewal 4 process. And it needs to be a specific objection 5 under one of the specific criteria. And the 6 Division has to issue a finding that that has not 7 been satisfied. And nothing has been presented 8 here today with respect to any of those criteria. 9 And so that--I mean, we're happy to sit 10 here and listen. And I think we want to, you 11 know, recognize the responsibility of a mine 12 operator to be environmentally sensitive. But 13 this is an administrative proceeding. And we need 14 to follow the administrative rules. The procedure 15 with respect to the mine plan modification was an 16 administrative proceeding. They exhausted their 17 administrative remedies in that process. That's 18 now past. 19 MR. BAZA: Very well. I don't want to 20 belabor this. And I know that some of the things 21 that we may want to comment on right now will 22 just rehash the same things that have already been 23 said. Let me just ask this. Before I discuss 24 this with Counsel, is there any other comment or 25 constructive statement that anyone would like to</p>	<p style="text-align: right;">Page 39</p> <p>1 MR. BAZA: Okay. Thank you for those 2 statements and comments. 3 Mr. Alder, you--are you finished? I 4 didn't want to close this before--did you have 5 anything more you wanted to say? 6 MR. ALDER: No. I-- 7 MR. BAZA: I couldn't tell if you were 8 popping your hand. 9 MR. ALDER: Yeah. I know. And I'm 10 not . . . 11 I think what Mr. Kirkham summarized as 12 to the difference between the modification and the 13 renewal and the Division's role--I want to give an 14 opportunity for the Division to consult with me 15 and maybe give a formal or clear response rather 16 than just spout off the top of my head, even 17 though this is an informal procedure. But the 18 Division doesn't have a NEPA role in the 19 modification. That was OSM that makes that 20 decision. And we concur that that decision has 21 been made. And so we're here about the renewal. 22 We concur with that. And I guess I still won't 23 see the connection between the concerns that they 24 had with regard to how the modification is being 25 implemented and how they have not presented</p>
<p style="text-align: right;">Page 38</p> <p>1 put on the record at this point? 2 If not-- 3 MR. MUELLER: (Raises hand.) 4 MR. BAZA: Mr. Mueller. 5 MR. MUELLER: Yeah. In light of what 6 John Kirkham said, I don't know if this is 7 obvious, but the administrative procedures we went 8 through with the Forest Service, according to his 9 time line, occurred at least four months, five 10 months after the mine plan modification he says 11 was made on July 27. That's something important 12 to note. 13 It's also important to note that the 14 Forest Service correctly has held that it has the 15 authority to consent. And I believe John Kirkham 16 is probably trying to split legal hairs where-- 17 with saying the Forest Service has authority to 18 concur, which is something other than the consent 19 that the Forest Service gave in December. 20 MR. BAN: And I also believe that they 21 have the ability to attach coal lease stipulations 22 that are outlined in their plan. I'm not sure 23 when the exact time--the exact--when they're 24 required to attach the timing on that. I'm not 25 exactly sure on--but . . .</p>	<p style="text-align: right;">Page 40</p> <p>1 anything I hear as to how that affects the 2 renewal criteria that have been elaborated by so 3 many people. 4 So, I mean, I think this is an informal 5 process. It's not supposed to be like we're 6 making arguments. We want to hear what that is. 7 But I haven't heard anything. So I don't know 8 that our response will take much time. 9 MR. BAZA: And do you have a 10 recommendation on how this informal conference 11 should proceed, giving the Division a chance to 12 make that response? 13 MR. ALDER: I think a few days to 14 submit that to you would be helpful before you 15 close the conference. 16 MR. BAZA: All right. Then I'd like to 17 sit with Counsel here for a minute. And we'll go 18 to another room, so--yes, sir. 19 MR. MUELLER: Is that when you'll find 20 out if there's an opportunity to submit additional 21 information? 22 MR. BAZA: We will address that. 23 MS. BEARD: Do you have a request on a 24 time that you would need to submit more 25 information?</p>

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<p style="text-align: right;">Page 41</p> <p>1 MR. MUELLER: I'll leave that time line 2 up to you as long as it's, you know, more than 24 3 hours. 4 MS. BEARD: Okay. 5 MR. MUELLER: Or at least 24 hours 6 turnaround. 7 MR. BAZA: Give us a few minutes. And 8 we'll be right back. 9 (Recess taken, 11:05-11:30 a.m.) 10 MR. BAZA: Okay. We're going to go 11 back on the record. 12 Before I make some ending statements, 13 I'd like to ask Mr. Alder a question. 14 MR. ALDER: Oh, dear. 15 MR. BAZA: And, Mr. Alder, you heard 16 Mr. Kirkham's statement about the February 7, 17 2006, deadline for obtaining a permit renewal. 18 MR. ALDER: Yes. 19 MR. BAZA: Does the Division have an 20 opinion or a position on that? 21 MR. ALDER: Well, I suppose you're 22 referring to the fact that because of this 23 informal conference we would have up to 60 days-- 24 and whether there's a conflict--I don't know if 25 that's what you're referring to. I think that</p>	<p style="text-align: right;">Page 43</p> <p>1 there can be conditions, you know, so-- 2 MR. BAZA: Sure. 3 MS. GRUBAUGH-LITTIG: --that is one 4 caveat is there can be conditions. 5 MR. BAZA: Right. Well--and the 6 Division does have to reach a Division on a 7 permit renewal. And since I'm hearing no conflict 8 with the fact that we have--the Division has to 9 do that by February 7, then I'm going to say that 10 UEC has a limited amount of time to be able to 11 provide any additional information that they want 12 to provide for the Division to consider for that 13 permit renewal. And as I looked at the calendar 14 when Counsel and I were talking, February 7 is 15 roughly about two weeks out from today. And I 16 would like to give the Division full ability to 17 have as much time as it can to process whatever 18 statements UEC wants to provide that could add to 19 that decision. 20 And so with that in mind, I'm going to 21 ask that UEC have the deadline of the close of 22 business this Friday, which is the 27th of 23 January, to be able to supply any additional 24 information that they would like the Division to 25 consider in that decision on the permit renewal.</p>
<p style="text-align: right;">Page 42</p> <p>1 the permit renewal is based on the original 2 renewal date. And Mr. Kirkham can correct me on 3 this. But I think we concur in that. But I 4 don't know what your question would be. I think 5 we concur. 6 MR. BAZA: Is there a time certain that 7 the Division has to issue a decision on the 8 permit renewal? 9 MR. ALDER: Yes. 10 MR. BAZA: Pam's nodding her head. 11 MR. ALDER: I'm hearing yes all around 12 me. 13 MR. BAZA: And is that time certain the 14 February 7 date? 15 MR. ALDER: Personally, I haven't 16 researched that. 17 MR. BAZA: I'm seeing heads nodding yes 18 to that also. 19 Well, if that's the case, it seems to 20 be a firm deadline to me. And as we want--yes, 21 Pam. 22 MS. GRUBAUGH-LITTIG: Well, I was just 23 going to say, the permitting essentially expires. 24 And so it has to be renewed by that date. It-- 25 and you issue a permit--a renewed permit. And</p>	<p style="text-align: right;">Page 44</p> <p>1 In addition to that, I'll indicate 2 beyond that, there's an opportunity for, 3 obviously, UEC to discuss anything with the 4 Division that applies to its administrative 5 actions that could help in future processes of 6 this type, but that the appeal of any decision 7 that's reached by the Division--and I mentioned 8 this at the beginning--has to go, then, to the 9 Board of Oil, Gas & Mining. And there is a 10 requirement under Rule R645-300-200 that says in 11 order to conduct that administrative review of a 12 Division decision, that you would have to file 13 with the Board of Oil, Gas & Mining within 30 14 days of the Division's decision. 15 So with that, again, to reiterate, I'm 16 asking UEC to turn in any information they want 17 to provide to be considered in the permit renewal 18 by this Friday. The Division is under a--at 19 least a prescribed deadline in the rules to make 20 a decision on the permit renewal by a date 21 certain. And then UEC then has the opportunity, 22 of course, for a board hearing appeal to that. 23 Mr. Kirkham, do you have your hand-- 24 MR. KIRKHAM: Well, my only question 25 was whether we'd be given the opportunity to</p>

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<p style="text-align: right;">Page 45</p> <p>1 respond to whatever it is they submit. And I--it 2 was my understanding that the purpose of the time 3 period to decide to make the decision to request 4 the informal conference and then the two weeks 5 that they've already had to prepare whatever they 6 had to present would give them adequate time. 7 I'm not picking with it, but I just--you know, 8 that doesn't give PacifiCorp any time to respond 9 if there's something in there that is worthy of 10 response. So I just point that out for the 11 record, that we will not have been in a position 12 to provide a response to whatever it is they 13 present-- 14 MR. BAZA: Would-- 15 MR. KIRKHAM: --even though they've 16 had, you know, months now to prepare and-- 17 MR. BAZA: Yeah. 18 MR. KIRKHAM: --two weeks of formal 19 notice that--as to the time and date of this 20 proceeding. But having said that-- 21 MR. BAZA: Would you be able to provide 22 that written response to the Division prior to the 23 time the Division has to issue a permit renewal 24 decision? 25 MR. KIRKHAM: Well, that's what I say.</p>	<p style="text-align: right;">Page 47</p> <p>1 opportunity for debate. It's really an 2 opportunity to say to the Division, Can we provide 3 you with information that will help you make this 4 permit decision? Now, the permit decision that's 5 issued is an appealable decision by any party, by 6 the applicant or someone who's going to be 7 affected by the decision. So that certainly is 8 appealable under the rules of the Division and the 9 board. 10 But I think the thing that this 11 conference is supposed to do, or the purpose that 12 I laid out, was--it's to help the Division reach 13 an adequate decision by the time that it has to. 14 And as I asked Mr. Alder the question, the point 15 I was trying to drive at was, when is that 16 deadline for the Division to make such a decision? 17 And it appears to be by the seventh of February, 18 so . . . 19 Mr. Alder. 20 MR. ALDER: Are you, then, in your 21 decision here concluding that the informal 22 conference will close as of the end of business 23 on that Friday? Is that what you're saying? Is 24 that what you're referring to, that deadline for 25 UEC to comply? Or are you keeping it open longer</p>
<p style="text-align: right;">Page 46</p> <p>1 I don't know what they're going to submit. And 2 so it's hard for me to say--if you give them 3 until Friday, PacifiCorp doesn't have that much 4 time before the Division has to make its decision. 5 So we're--we would appreciate getting a copy of 6 what's submitted. 7 MR. BAZA: Okay. 8 MR. MUELLER: Would it expedite the 9 process if we sent a copy to you, as well, just 10 so you get it right away? 11 MR. BAZA: I think it would-- 12 MR. KIRKHAM: Yeah. 13 MR. BAZA: --if you do that to both 14 PacifiCorp and the Division. But as I've talked 15 with Counsel about this, I hope there hasn't been 16 a misconception about what this informal 17 conference represents. It is an opportunity to 18 provide information to help the Division reach a 19 decision on the permit renewal. It's not 20 necessarily an opportunity for appeal, because no 21 decision has been made yet. 22 And when I indicated at the beginning 23 of the informal conference that we wanted to limit 24 or restrict or avoid a lot of back and forth 25 discussion here, I don't think it's even an</p>	<p style="text-align: right;">Page 48</p> <p>1 than that? 2 MR. BAZA: Well, honestly, I'm feeling 3 like the informal conference can close as of 4 today. But the UEC is still capable of providing 5 information to the Division-- 6 MR. ALDER: Okay. 7 MR. BAZA: --up until Friday so that the 8 Division can reach a decision by the February 7 9 deadline. 10 MR. ALDER: Okay. Thank you. 11 MR. BAZA: Are there any other 12 questions on that? 13 Very well. Then, at this point, we'll 14 consider the conference closed. And UEC will have 15 that time frame to submit further statements to 16 the Division. Thank you very much. 17 MR. MUELLER: Thank you. 18 (Proceedings concluded at 11:38 a.m.) 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>

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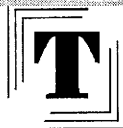
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